



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3232

AGENDA

TUESDAY, SEPTEMBER 4, 2018

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

5:30 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

I. CALL JOINT MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

II. ADJOURN TO CLOSED SESSION (5:30 PM)

(a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING

Pursuant to California Government Code Section 54957.6

City Negotiator: Liz Brown, Human Resources Director

Employee Group: International Association of Fire Fighters, Milpitas Police Officers

Association, Professional and Technical Group, Mid-Management and Confidential Group, and Milpitas Employees Association

Under Negotiation: Wages, Hours, Benefits, and Working Conditions

(b) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to California Government Code Section 54956.9(d)(1)

Workers Compensation Appeals Board. Case Numbers ADJ9097731, ADJ10393147, ADJ10398173 and ADJ11420061

(c) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to California Government Code Section 54956.9(d)(1)

Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

(d) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to California Government Code Section 54956.9(d)(1)

First Amendment Coalition v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235

(e) PUBLIC EMPLOYEE EVALUATION

Pursuant to Government Code Section 54957

Employee Position: City Attorney

(f) CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency designated representative: Julie Edmonds-Mares, City Manager

Employee: City Attorney Contract

III. CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. INVOCATION (Councilmember Nuñez)

VI. PRESENTATIONS

- Proclaim September as *National Preparedness Month*
- Recognize Milpitas North Valley Bobby Sox League

VII. PUBLIC FORUM

Those in the audience are invited to address City Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit spoken remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

VIII. ANNOUNCEMENTS

IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

X. APPROVAL OF [AGENDA](#)

XI. CONSENT CALENDAR (Items No. 1 through No. 14)

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

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| 1. | Accept Schedule of Meetings/City Council Calendar - September 2018 (Staff Contact: Mary Lavelle, 408-586-3001) |
| 2. | Approve City Council Meeting Minutes for August 21, 2018 (Staff Contact: Mary Lavelle, 408-586-3001) |
| 3. | Approve Mayor's Recommendation of a Staff Alternate to the Silicon Valley Clean Energy Board of Directors (Staff Contact: Ashwini Kantak, 408-586-3053) |
| 4. | Approve Fiscal Year 2017-18 Year End Budget Adjustments (Staff Contact: Will Fuentes, 408-586-3111) |
| 5. | Approve Amendments to the Operating Budget for Fiscal Year 2018-19 Relating to the Shift of Housing Functions Between Departments (Staff Contact: Will Fuentes, 408-586-3111) |
| 6. | Approve Request from Korean Language & Culture Foundation for a Donation of \$500 in Support of Hangul Day Event on September 15, 2018 (Staff Contact: Mary Lavelle, 408-586-3001) |
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| 7. | Adopt a Resolution Authorizing Purchase of Six Public Safety Vehicles from the National Auto Fleet Group for the Milpitas Police and Fire Departments, Totaling \$237,372.22, Through a Cooperative Procurement Contract (Staff Contacts: Will Fuentes, 408-586-3111, Richard Frawley, 408-586-2824, and Daryl Sequeira, 408-586-2434) |
| 8. | Adopt a Resolution Authorizing the Chief of Police to Execute the Agreement with the Office of Traffic Safety for the 2019 Selective Traffic Enforcement Program (Staff Contact: Kevin Moscuzza, 408-586-2412) |
| 9. | Adopt a Resolution Authorizing the Bay Area Water Supply And Conservation Agency to Negotiate with The City and County of San Francisco to Amend the Water Supply Agreement (Staff Contact: Tony Ndah, 408-586-2602) |
| 10. | Adopt a Resolution Approving a Site Development Permit and Planned Unit Development Amendment for New 5,956 square foot 1.5-story Residence on a Vacant Lot on the Hillside at 1499 Country Club Drive and Making Findings of Exemption Under the California Environmental Quality Act (Staff Contact: Krishna Kumar, 408-586-3276) |
| 11. | Adopt a Resolution Granting Final Acceptance of Public Improvements and Approve Release of Faithful Performance Security for Public Improvements for the Cobblestone Subdivision at 345 and 375 Los Coches Street by TRI Pointe Homes, Inc. (Staff Contact: Steve Erickson, 408-586-3301) |
| 12. | Adopt a Resolution Granting Final Acceptance of Public Improvements and Approve Release of Faithful Performance Security for Public Improvements for the Sinclair Renaissance (Belcourt) Subdivision at 245-373 Sinclair Frontage Road by Brookfield Belcourt, LLC (Staff Contact: Steve Erickson, 408-586-3301) |
| 13. | Approve an Agreement with Hadronex, Inc. Doing Business as SmartCover Systems for the Purchase, Installation and Alert System Services Related to Deployment of SmartLevel Sewer Monitoring System Units for an Initial Term through December 31, 2019, with an Option to Extend for Up to Four Additional One-year Terms, for a Total Not to Exceed \$168,357 for the Maximum Term of the Agreement (Staff Contacts: Will Fuentes, 408-586-3111 and Tony Ndah, 408-586-2602) |
| 14. | Approve and Authorize the City Manager to Execute Amendment No. 4 to the Agreement with Best & Krieger LLP (BBK) to Provide City Attorney Services for the Period of September 1 to September 30, 2018 (Staff Contact: Julie Edmonds-Mares, 408-586-3050) |

XII. PUBLIC HEARING

The following items No. 15 – 18 scheduled for discussion

15. Conduct a Public Hearing and Adopt a Resolution Approving a Site Development Permit Amendment of Resolution No. 8511, Allowing Modification of Transit Area Specific Fee Payment Schedule and Making Findings Pursuant to the California Environmental Quality Act (Staff Contact: Michael Fossati, 408-586-3274)

XIII. NEW BUSINESS

16. Receive Information on the 2020 Census from Marcelo Quinones, Santa Clara County Deputy County Counsel (Staff Contact: Jessica Garner, 408-586-3284)

17. **Discuss Cities Association of Santa Clara County Recommendation to Create a Santa Clara/Santa Cruz Community Aircraft Noise Roundtable (Staff Contact: Steve McHarris, 408-586-3059)**

XIV. AGREEMENT

18. **Approve the Conceptual Design for the Milpitas Sports Center Skate Park and Snack Shack/Restroom Building; and, Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Verde Design Inc. to Increase Compensation by \$46,000 for Project No. 5111 (Staff Contacts: Renee Lorentzen, 408-586-3409 and Steve Erickson, 408-586-3301)**

XV. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XVI. ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 18, 2018

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website. All City Council agendas and related materials can be viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

AGENDA REPORTS

XI. CONSENT CALENDAR

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| 1. | <p>Accept Schedule of Meetings/City Council Calendar - September 2018 (Staff Contact: Mary Lavelle, 408-586-3001)</p> <p><u>Recommendation:</u> Receive and accept Council calendar of meetings for September 2018. Note any changes or additions, if needed.</p> <p><u>Attachment:</u> September 2018 Calendar</p> |
| 2. | <p>Approve City Council Meeting Minutes for August 21, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)</p> <p><u>Recommendation:</u> Move to approve the August 21, 2018 City Council meeting minutes.</p> <p><u>Attachment:</u> Draft meeting minutes August 21, 2018</p> |
| 3. | <p>Approve Mayor's Recommendation for Appointment of a Staff Alternate to the Silicon Valley Clean Energy Board of Directors (Staff Contact: Ashwini Katak, 408-586-3053)</p> <p><u>Background:</u> On December 19, 2017, City Council appointed Vice Mayor Grilli to represent City of Milpitas as a voting member on Silicon Valley Clean Energy Board of Directors. The alternate is appointed by the respective governing body, however can be a member of the body itself, city staff or the public. The Board of Directors' meetings are held on the second Wednesday of each month at 7:00 pm at Cupertino Community Hall, 10350 Torre Avenue in Cupertino. Mayor Tran recommends Public Works Director Tony Ndah serve in that capacity. The next meeting is scheduled on September 12, 2018.</p> <p><u>Recommendation:</u> Per Mayor Tran's recommendation, appoint Public Works Director Tony Ndah as staff alternate to the City's voting member on the Silicon Valley Clean Energy Board of Directors.</p> <p><u>Attachment:</u> None</p> |
| 4. | <p>Approve Fiscal Year 2017-18 Year End Budget Adjustments (Staff Contact: Will Fuentes, 408-586-3111)</p> <p><u>Background:</u> Finance staff is in the process of closing the City's accounts for Fiscal Year 2017-18 with a focus on expenditures. To maintain conformity with the City's budgeting policies and to prepare for the annual external financial audit, staff examined all expenditure accounts and identified the following budget adjustments. These adjustments recognize items arising during the fiscal year that were not included or vary from original FY 2017-18 budget estimates. This is a common annual end of the year "true-up" process amongst local governments that is critical to the year-end audit/close. The City's budget policy requires that any additional appropriations to a department, capital improvement project's budget or re-appropriation of monies from one fund to another must be approved by the City Council.</p> <p>The requested budget adjustments deemed necessary at year end FY 2017-18 include the following budget changes and authorizations which fall into the category of operations. They are also detailed in the Budget Change Form (in agenda packet).</p> |

Operations:

1. **Increase General Fund budget appropriations for the Fire Department by \$697,112** for incurred overtime expenditures to respond to regional fires through the California Fire Service and Rescue Emergency Mutual Aid System. The source of funding for the budget appropriation is from reimbursements received from the State of California Office of Emergency Services (OES) and Federal Emergency Management Agency (FEMA). The revenue account for this reimbursement will also be increased by \$697,112 to offset the expenditure adjustment.
2. **Increase budget appropriation in the amount of \$20,700 for the Public Works Department from the 95-1 Light and Landscape Maintenance District (LLMD) Fund for personnel services.** This request is for increased funding for Public Works maintenance expenditures. The special assessment tax that has been received from this district in FY 2017-18 fully offsets and cover the additional expenditures requested.

Fiscal Impact: For Fire mutual aid overtime, \$697,112 in General Fund costs are offset by \$697,112 in realized and anticipated reimbursements. For LLMD No. 95-1, \$20,700 in requested costs are offset by \$20,700 in tax assessment revenue. Thus, there is no impact to fund balance in either the General Fund or the LLMD No. 95-1 Fund.

Recommendation: Approve the Fiscal Year 2017-18 year-end budget appropriations and reallocations as itemized on the budget change form.

Attachment: [Budget Change Form](#)

5. **Approve Amendments to the Operating Budget for Fiscal Year 2018-19 Relating to the Shift of Housing Functions Between Departments (Staff Contact: Will Fuentes, 408-586-3111)**

Background: In order to improve operational effectiveness and account for different skill sets of new Directors in the Building and Safety Department, and the Planning and Neighborhood Services Department, when compared to their predecessors, Housing and Code Enforcement functions that have been collectively referred to as “Neighborhood Services” have moved from Planning to Building. The new Building Department will be responsible for the permit center, building inspection, plan review, code enforcement and housing, CDBG administration, and community assistance programs. This is displayed in the organization charts (Exhibit 1 in agenda packet).

At a later date, after a full operational assessment of both departments by an outside consultant has been made, formal name changes for both departments will be brought before Council via an ordinance. In the meantime, the City’s budget policy requires that any additional appropriations to a department’s operating budget or re-appropriation of monies from one department to another over \$20,000 must be approved by the City Council. Therefore, in order to pay for new activities shifted from the Planning Department to the Building Department, a budget amendment is necessary. This budget amendment is summarized in the Budget Change Form (in agenda packet).

Fiscal Impact: Since the above requests are simply a one-for-one shift of budgetary appropriations amongst departments within the same funds, there will be no fiscal impacts to associated funds. Nevertheless, the FY 2018-19 operating budgets of several divisions (functions) are impacted by the above requests and are summarized here:

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| • Planning (512): | (\$251,924) |
| • Neighborhood Services - Planning (551): | (\$2,034,647) |
| • Housing – Building (536): | \$2,286,571 |
| TOTAL IMPACT: | \$0 |

Recommendation: Approve amendments to the City of Milpitas Operating Budget for Fiscal Year 2018-19 relating to the shift of housing functions between departments.

Attachments:

- a) [Organizational Changes](#)
- b) [Budget Change Form](#)

6. Approve Request from Korean Language and Culture Foundation for a Donation of \$500 in Support of Hangeul Day Event on September 15, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)

Background: On August 27, 2018, the City Clerk received a “Donation or Fee Waiver/Reduction Request Application Form” from the Korean Language and Culture Foundation, a non-profit organization in Milpitas. This group plans to hold a celebration of Hangeul, the Korean alphabet on September 15, 2018 at Milpitas Library. The annual event allows participants to experience Korean culture including the Korean alphabet, Korean customs and printing system. The Foundation is seeking funds for support from the City of Milpitas and submitted its IRS non-profit determination letter. This is the fifth year the group has requested a donation for Hangeul Day.

Fiscal Impact: \$20,000 was approved and included in the FY 2018-19 City budget for City Council’s Unallocated Community Promotions. If the \$500 donation request is approved, then \$18,597.23 would be the remaining balance.

Recommendation: Consider request from the Korean Language and Culture Foundation and move to approve a \$500 donation to the non-profit group for its Hangeul Day celebration on September 15, 2018, and permit use of the City seal logo on event flyer.

Attachments:

- a) [Donation request application + IRS letter + event flyer](#)
- b) [Report from 2017 event](#)

7. Adopt a Resolution Authorizing Purchase of Six Public Safety Vehicles from the National Auto Fleet Group for the Milpitas Police and Fire Departments, Totaling \$237,372.22, Through a Cooperative Procurement Contract (Staff Contacts: Will Fuentes, 408-586-3111; Richard Frawley, 408-586-2824 and Daryl Sequeira, 408-586-2434)

Background: To support the ongoing operational needs of the Police Department, the approved Fiscal Year 2018-19 budget includes funding for the purchase of four 2019 Ford Police Interceptor Utilities, and one 2019 Ford Fusion Hybrid. These five new vehicles will replace older vehicles that have reached the end of their useful life as police vehicles. Additionally, to support the operational needs of the Fire Department, the approved Fiscal Year 2018-19 budget includes funding to purchase one 2019 Ford F-250 Super Duty as a battalion command vehicle.

Staff recommends a cooperative purchase through the National Joint Powers Alliance (NJPA). Cooperative purchasing through NJPA is specifically authorized pursuant to Municipal Code Section I-2-3.08 “Cooperative Procurement.” The Purchasing Agent reviewed all of the documentation from the National Joint Powers Alliance Request for Proposal (RFP) No. 120716 entitled “Vehicles, Cars, Vans, SUVs, and Light Trucks with Related Equipment, Accessories, and Services” and the contract that was awarded to National Auto Fleet Group by NJPA, and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City of Milpitas’

Purchasing Division and that the prices for the vehicles are the same as that offered in the original contract.

The City Council is requested to adopt a resolution authorizing the City's Purchasing Agent to purchase the six vehicles for the Fire and Police Departments as a cooperative agreement procurement.

Fiscal Impact: Six vehicles will cost a total of \$237,372.22. Nevertheless, sufficient funding has been allocated and appropriated by City Council in the FY 2018-19 Equipment Replacement Fund for this purchase.

Recommendation: Adopt a resolution authorizing the Purchase Agent to purchase six public safety vehicles from the National Auto Fleet Group for a total cost of \$237,372.22 through a cooperative procurement contract with the National Joint Powers Alliance.

Attachment: [Resolution](#)

8. Adopt a Resolution Authorizing the Chief of Police to Execute the Agreement with the Office of Traffic Safety for the 2019 Selective Traffic Enforcement Program (Staff Contact: Kevin Moscuzza, 408-586-2412)

Background: The Office of Traffic Safety (OTS) is administering the 2019 Selective Traffic Enforcement Program (STEP) grant that offers funds to reimburse law enforcement agencies for overtime expenditures directed towards traffic safety operations.

OTS has awarded the City of Milpitas a \$90,000 2019 STEP grant to implement enforcement and educational strategies to reduce the number of persons killed and injured in traffic collisions. The strategies will include deployment for impaired driving saturation patrols, impaired driving checkpoints, traffic safety enforcement operations, distracted driving enforcement, motorcycle safety enforcement, pedestrian and bicycle safety enforcement, public education, equipment purchases, and training. The grant spending period begins on October 1, 2018 and ends on September 30, 2019.

Fiscal Impact: The 2019 STEP grant will reimburse overtime expenditures.

Recommendations:

1. Adopt a resolution to authorize the Chief of Police to execute the agreement with the Office of Traffic Safety (OTS) for the 2019 Selective Traffic Enforcement Program (STEP).
2. Approve a budget appropriation in the amount of \$90,000 to the Police Department overtime budget.

Attachments:

- a) [Resolution + STEP Grant as Exhibit](#)
- b) [Budget Change Form](#)

9. Adopt a Resolution Authorizing the Bay Area Water Supply And Conservation Agency to Negotiate with The City and County of San Francisco to Amend the Water Supply Agreement (Staff Contact: Tony Ndah, 408-586-2602)

Background: The City of Milpitas purchases wholesale treated water from the City and County of San Francisco (CCSF). In April 2003, the City of Milpitas and other water suppliers in Alameda, San Mateo, and Santa Clara counties established the Bay Area Water Supply and Conservation Agency (BAWSA).

The City of Milpitas is one of the 26 members of BAWSCA. BAWSCA is the only entity that has the authority to directly represent the needs of the wholesale customers that depend on the San Francisco Regional Water System (RWS). Through BAWSCA, wholesale customers, including the City of Milpitas, can work with San Francisco Public Utilities Commission (SFPUC) on an equal basis to ensure a reliable supply of high quality water is available at a fair price to all members.

In 2009, the City approved the Water Supply Agreement (WSA) between CCSF and wholesale customers in Alameda County, San Mateo County, and Santa Clara County. At this time, some sections of the WSA require amendments to address substantive and important issues that have arisen during implementation of the Agreement; however, these amendments do not diverge from the existing policies and spirit of the WSA.

The following items are of interest to CCSF:

- 1) Process for reviewing the Wholesale Capital Fund;
- 2) Wholesale debt-coverage ratio for the rate-setting process;
- 3) Extension of the Water System Improvement Program completion date; and
- 4) Description of the Regional Groundwater Storage and Recovery Project that is being built by San Francisco as part of the Water System Improvement Program.

Additionally, the following four items are of interest to BAWSCA:

- 1) BAWSCA's oversight role over the San Francisco Public Utility Commission's (SFPUC) 10-year Capital Improvement Program;
- 2) The procedure to divide available water between the SFPUC and its Wholesale Customers during droughts;
- 3) Extension of the deadline for a decision by San Francisco to make San Jose and Santa Clara permanent customers of the RWS and extend increased water supply to the other permanent Wholesale Customers; and
- 4) Resolution of disputed SFPUC Regional Water System asset classifications.

BAWSCA now requests that the City delegate to BAWSCA the authority to negotiate with CCSF to amend the WSA. Section 8.04(B) of the WSA allows such delegation provided that a majority of the Wholesale Customers adopt a resolution to that effect. Before any changes to the WSA can become effective, amendments must be approved by the City Council and by San Francisco. The requested delegation of authority will allow BAWSCA to negotiate amendments related to discrete but important items in the WSA.

This authorization allows BAWSCA to continue to serve as the representative to the City in discussions and negotiations with CCSF for the amendment to the City's WSA. BAWSCA's staff and consultants have the necessary background and capabilities to represent the City with relevant disciplines, including civil engineering, water supply planning, finance, economics, accounting and law.

Staff recommends that the City Council adopt a resolution authorizing BAWSCA to negotiate WSA amendments on the City's behalf.

Fiscal Impact: None. This action will not create any new financial responsibilities for the City. If any of the negotiated amendments have the potential of a fiscal impact, staff will bring back an update to the City Council prior to bringing forward an amendment for Council consideration.

Recommendation: Adopt a resolution authorizing Bay Area Water Supply and Conservation Agency to negotiate with the City and County of San Francisco to amend the Water Supply Agreement.

Attachment: [Resolution](#)

10.

Adopt a Resolution Approving a Site Development Permit and Planned Unit Development Amendment for New 5,956 square foot 1.5-story Residence on a Vacant Lot on the Hillside at 1499 Country Club Drive and Making Findings of Exemption Under the California Environmental Quality Act (Staff Contact: Krishna Kumar, 408-586-3276)

Background: The City received a Site Development Permit application to construct a 5,956 square foot, one and half story single-family residence on a vacant lot located at 1499 Country Club Drive in the hillside. The City also received a Planned Unit Development Amendment application to propose a reduction from a 3 car to a 2 car garage, an increase from total allowed square footage of 4,000 square feet to 5,956 square feet, an increase in grading from 0 cubic yards to 806 cubic yards and changes in the exterior finishes from what was originally approved in Planned Unit Development No. 68: Countryside Estates. The project site is an undeveloped 1.022 acre parcel within Planned Unit Development No. 68: Countryside Estates. The project site is zoned as R1-H in the Hillside Combining District and the General Plan designation is Hillside Low-Density.

On August 8, 2018, the Milpitas Planning Commission unanimously recommended approval of the Site Development Permit and Planned Unit Development Amendment for the project. Commissioners determined the project is consistent with the policies and guiding principles identified in the General Plan, and satisfies the requirements specified in the Zoning Ordinance and Planned Unit Development No. 68. The project's architectural design and site planning is aesthetically compatible with the neighboring homes and the surrounding hillside and meets the development standards set forth by the Zoning Code and Planned Unit Development No. 68 and will not impede views of the hillside from the valley floor.

In accordance with the Milpitas Hillside Combining District Ordinance (Milpitas Municipal Code Section XI-10-45, *et seq.*), the project must receive site and architectural review approval by the City Council, as well as the Planning Commission. (*See* Milpitas Municipal Code Section XI-10-45.09 *et seq.*)

Environmental: A categorical exemption pursuant to Section 15303(a) of the CEQA Guidelines – New Construction or Conversion of Small Structures, has been applied to this project. Section 15303(a) includes, but is not limited to, one single-family residence in a residential zone. The project's proposed new construction of a single-family residence is within a residentially zoned area on a legal parcel.

As a separate and independent basis, the project is exempt from further CEQA review pursuant to Section 15183 of the CEQA Guidelines, which provides that projects which are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified (i.e. EIR for the Milpitas General Plan) shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. There are no such peculiar impacts associated with this project or site.

Fiscal Impact: None.

Recommendation: Adopt a resolution approving Site Development Permit No. SD18-0001 and Planned Unit Development Amendment P-PA18-0002 to construct a new hillside single family home on a vacant 1.022 acre site located at 1499 Country Club Drive and make findings of exemption under the California Environmental Quality Act.

Attachments:

- a) [Resolution](#)
- b) [Planning Commission Meeting Minutes 08/08/2018](#)
- c) [Planning Commission Staff Report 08/08/2018](#)
- d) [Project Plans](#)

11.

Adopt a Resolution Granting Final Acceptance of Public Improvements and Approve Release of Faithful Performance Security for Public Improvements for the Cobblestone Subdivision at 345 and 375 Los Coches Street by TRI Pointe Homes, Inc. (Staff Contact: Steve Erickson, 408-586-3301)

Background: On April 18, 2017, the City Council adopted Resolution No. 8654 granting initial acceptance of public improvements (Public Improvement Plan No. 2-1188) for Tract No. 10221 for the Cobblestone Subdivision located at 345 and 375 Los Coches Street by TRI Pointe Homes, Inc. (Developer). The Developer has completed corrective work on public improvements following completion of the one-year warranty, and the project and related improvements along Los Coches Street and South Milpitas Boulevard including sidewalk, curb and gutter, paving, utility connections and landscaping are ready for final acceptance.

California Environmental Quality Act: Granting final acceptance of public improvements and releasing faithful performance security for public improvements are not considered projects under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None

Recommendation: Adopt a resolution granting final acceptance of public improvements for the Cobblestone Subdivision project at 345 and 375 Los Coches, Tract No. 10221, Public Improvement Plan No. 2-1188 and release of remaining faithful performance security.

Attachment: [Resolution](#)

12.

Adopt a Resolution Granting Final Acceptance of Public Improvements and Approve Release of Faithful Performance Security for Public Improvements for the Sinclair Renaissance (Belcourt) Subdivision at 245-373 Sinclair Frontage Road by Brookfield Belcourt, LLC (Staff Contact: Steve Erickson, 408-586-3301)

Background: On May 17, 2016, the City Council adopted Resolution No. 8548 granting initial acceptance of public improvements (Public Improvement Plan No. 2-1124) for Tract No. 10029 for the Sinclair Renaissance (Belcourt) Subdivision located at 245-373 Sinclair Frontage Road by Brookfield Belcourt, LLC. (Developer). The Developer has completed corrective work on public improvements following completion of the one-year warranty, and the project and related improvements along Sinclair Frontage Road and Wrigley Way including sidewalk, curb and gutter, paving, utility connections, landscaping and public water main along the private streets are ready for final acceptance.

California Environmental Quality Act: Granting final acceptance of public improvements and releasing faithful performance security for public improvements are not considered projects under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None

Recommendation: Adopt resolution granting final acceptance of public improvements for the Sinclair Renaissance (Belcourt) Subdivision project at 245-373 Sinclair Frontage Road, Tract No. 10029, Public Improvement Plan No. 2-1124 and release of remaining faithful performance security.

Attachment: [Resolution](#)

13.

Approve an Agreement with Hadronex, Inc. Doing Business as SmartCover Systems for the Purchase, Installation and Alert System Services Related to Deployment of SmartLevel Sewer Monitoring System Units for an Initial Term through December 31, 2019, with an Option to Extend for Up to Four Additional One-year Terms, for a Total Not to Exceed \$168,357 for the Maximum Term of the Agreement (Staff Contacts: Will Fuentes, 408-586-3111 and Tony Ndah, 408-586-2602)

Background: All public wastewater collection system agencies in the San Francisco Bay Region are required to: a) take a proactive approach to system-wide operation, maintenance and management; b) to improve the condition of the collection infrastructure; and c) to preserve the integrity of the system and provide reliable service to minimize the frequency and impacts of sanitary sewer overflows (SSOs).

A sanitary sewer overflow is a spill, release or unauthorized discharge of wastewater from a sanitary sewer system. SSOs may result from issues such as a blockage in a sewer system line, which impedes the flow of wastewater resulting in overflow at upstream manholes. SSOs release raw sewage and other contaminants that may pollute surface or ground water, threaten property and public health, damage the environment and adversely affect aquatic life and the waters of the State.

In FY 2017-18, Council approved the Sanitary Sewer Overflow Improvements Project (CIP No. 6123), to implement a pilot program for “smart” manhole covers, in an effort to prevent SSOs. As part of the pilot program, the City engaged SmartCover Systems to provide a risk analysis of the City’s sanitary sewer system and subsequently develop a list of locations where SSOs have a higher likelihood of occurring in the system.

The SmartCover Systems manhole covers use a web-based technology that provides real-time remote sewer overflow monitoring via a satellite communications system. The units are installed on the underside of existing manhole covers and provide real-time monitoring of sewage levels in manholes. Alarms on the units are transmitted via email and/or text and can warn of potential SSO events; allowing staff to immediately dispatch to locations of concern to reduce the likelihood of spills, improving response times, and enhancing service to residents.

Due to the success of the pilot program, staff submitted a Sole Source request to the Purchasing Division pursuant to Milpitas Municipal Code Title 1, Chapter 2-3.09 - Sole Source Procurement based on the proprietary design and alert system of the SmartLevel Sewer Monitoring System. The request was approved on August 23, 2018.

SmartCover Systems is a sole source provider for this product, including the SmartLevel monitoring system which provides continuous monitoring capability for levels and flow data in the sewer collection system. These products are patented and proprietary and designed and manufactured by Hadronex, Inc. Professional services are solely provided by SmartCover Systems for the management and security of data, software maintenance and upgrades and user website interface and communication systems. The year one purchase of the system is \$124,677 for 30 units, which includes the SmartCovers, installation and one-year of the monitoring alert system. These 30 units would be installed on the manholes along the most critical segments of the system. Ongoing alert system costs are expected to

be \$10,920 for subsequent years in order to use the alert software of the SmartLevel Sewer Monitoring System units.

California Environmental Quality Act: This Project is exempt from CEQA under Class 1 - Section 15301 - Existing Facilities because it relates to operation, repair, maintenance or minor alterations to a public facility involving no or negligible expansion of use.

Fiscal Impact: Implementation and one-year of the monitoring alert system costs \$124,677 and ongoing alert system costs are expected to be \$10,920 annually, in order to use the alert software of the SmartLevel Sewer Monitoring System units. The total cost for the maximum contract term extending through December 31, 2023 is \$168,357. There are sufficient funds in CIP Project No. 6123 – Sanitary Sewer Overflow Improvements to fund the purchase and installation of the SmartLevel Sewer Monitoring System manhole covers. Ongoing maintenance costs will need to be approved and appropriated by City Council in future years past year one.

Recommendation: Approve an Agreement with Hadronex, Inc. doing business as SmartCover Systems for the purchase, installation and five years of alert system services related to the deployment of SmartLevel sewer monitoring system units for an amount not to exceed \$168,357 through December 31, 2023.

Attachment: [Equipment Purchase Agreement](#)

14.

Approve and Authorize the City Manager to Execute Amendment No. 4 to the Agreement with Best & Krieger LLP (BBK) to Provide City Attorney Services for the Period of September 1 to September 30, 2018 (Staff Contact: Julie Edmonds-Mares, 408-586-3050)

Background: On September 22, 2015, the City Council approved the Legal Services Agreement with Best & Kreiger LLP (BBK) for City Attorney services. Prior to this time, legal services were provided by an in-house City Attorney. The BBK agreement had an initial term of approximately three years and a termination date of June 30, 2018. Amendment No. 2 to the agreement extended the term to August 31, 2018 and added \$91,667 to the agreement for this time period. In addition, by way of verbal action at its August 7, 2018 meeting, Council authorized extension of the current agreement further to September 30, 2018. However, Council did not authorize an adjustment to agreement compensation to account for an additional one month of legal services with BBK. Thus, at this time, staff recommends a written one month extension in length and terms of the original agreement to September 30, 2018 and an increase in agreement compensation of \$45,833.50. Such an extension will provide the City with continuity of legal services.

Fiscal Impact: The expiring BBK agreement has a not to exceed amount of \$550,000 per fiscal year for regular legal services that are not reimbursable by a developer or other third party. A one month extension in length under the terms of the expiring agreement would add \$45,833.50 for regular legal services. The Fiscal Year 2018-19 adopted budget for contractual City Attorney services, which are not reimbursable, is currently established at \$561,400. Thus, when combined with the previous two months' extension at \$91,667, a one month extension to the BBK agreement of \$45,833.50 (for a three months' total of \$137,500.50) is fully funded within the FY 2018-19 adopted budget and additional appropriations in FY 2018-19 are not necessary at this time.

Recommendation: Approve and authorize the City Manager to execute Amendment No. 4 to the agreement with Best & Krieger LLP (BBK) to provide City Attorney Services for the period of September 1 to September 30, 2018.

Attachment: [Amendment No. 4](#)

XII. PUBLIC HEARING The following items No. 15 – 18 scheduled for discussion

15. Conduct a Public Hearing and Adopt a Resolution Approving a Site Development Permit Amendment of Resolution No. 8511, Allowing Modification of Transit Area Specific Fee Payment Schedule and Making Findings Pursuant to the California Environmental Quality Act (Staff Contact: Michael Fossati, 408-586-3274)

Background: On November 17, 2015, the City Council approved Resolution No. 8511, which included a Site Development Permit, Conditional Use Permit, and Major Tentative Map to allow the development for The District - a master-planned development, covering approximately 26.65 acres, consisting of the following:

- 803 multi-family units (subdivided as condominiums, but operated as rental units),
- 355 townhomes and loft residential units,
- 175 room boutique hotel,
- Approximately 80,000 square feet of retail space.

The development is known as “The District,” and includes six subareas within its scope. To date, three of the six subareas, which include the 355 townhome and loft residential units are currently under construction. The master-planned development has remained generally unchanged, but staff is in talks with the developer for modifications to “The District – Lot 3,” which includes minor reductions in commercial space and residential unit counts, and an increase in hotel room development. Those modifications will be brought back to the City Council for modification of approval, once the scope has been clearly defined. The remainder of the master-planned development is following the general premise of the development schedule that was presented to the City Council in November 2015.

The developer of “The District,” Lyon Living is in the process of moving forward with construction of the fourth subarea, known as The District – Lot 2. The project includes the development of 207 multi-family residential units and 7,700 square feet of retail space.

Each subarea within “The District” is located within the Transit Area Specific Plan (“TASP”), which requires the developer of each subarea to pay a development impact fee, also known as a TASP fee. The requirement to pay the fee is addressed as Condition #33 of the approved Resolution No. 8511 for this master-planned development.

On August 21, 2018, applicant Lyon Living requested an amendment to Conditions #33 and #34 of Resolution No. 8511, which currently states the following:

33. **Transit Area Impact Fee.** Prior to building permit issuance the Permittee shall pay a Transit Area Development Impact fee. The subject fee will be estimated at the time of Subdivision Improvement Agreement and will be collected prior to building permit issuance.
34. **Development Fees.** Prior to building permit issuance, Permittee must pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee scheduled adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), Transit Area impact fee, plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. These fees are part of the secured subdivision improvement agreement referred to in condition of approval number 31 herein. (E)

Lyon is requesting that payment of the TASP fee be deferred and paid in installments, instead of at the time of building permit issuance. Lyon requests the condition be amended to read as follows (with added new language underlined and removed language stricken through):

33. **Transit Area Impact Fee.** Prior to building permit issuance the Permittee shall pay a Transit Area Development Impact fee. The subject fee will be estimated at the time of Subdivision Improvement Agreement and will be collected prior to building permit issuance, with the exception of “The District – Lot 2” project. For “The District – Lot 2” project, twenty-five (25) percent of the overall fee shall be obtained prior to building permit issuance. Fifty (50) percent of the overall fee shall be obtained prior to temporary certificate of occupancy issuance, and the remaining twenty-five (25) percent of the overall fee shall be obtained prior to final certificate of occupancy issuance.
34. **Development Fees.** Except as otherwise provided in Condition #33, prior to building permit issuance, Permittee must pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee scheduled adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), ~~Transit area impact fee,~~ plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. These fees are part of the secured subdivision improvement agreement referred to in condition of approval number 31 herein. (E)

Lyon has provided a memo discussing its application for the requested fee deferral (Attachment B).

Milpitas Municipal Code Section VIII-4-2.05 and Section 10-57.03(J) generally gives the City Council the authority to grant amendments for new development projects, when an application for modification is submitted. Although specific findings are not required for modifications, staff believed it was important to provide City Council with the additional benefits associated with the signature project. Lyon has included the following public benefits that are provided within the project.

Milpitas Municipal Code Section 10-57.03(J) gives the City Council the authority to modify conditions of approval, when an application for modification is submitted. Although specific findings are not required for modifications, staff believed it was important to provide City Council with the additional benefits associated with the signature project. Lyon has included the following public benefits that are provided within the project.

Proposed Public Benefits

| Feature | Description | Estimated Value |
|----------------------|--|--|
| Real property | Mapping of dedication and vacation of Houret Drive cul de sac for benefit of School District | \$10,000 (in civil engineering fees) |
| Free shuttle service | Hotel shuttle, seating 20-25 passengers, providing mass transportation to project area on weekdays from 6-9 a.m., 11 a.m.-1 p.m., and 4-7 p.m., with designated stops within the project site, as well as stops at the BART station, VTA station, bus terminal, and Great Mall. An operating plan will be submitted for city staff review. | Estimated startup cost of \$100,00 per shuttle Estimated Annual Cost of \$150,000 per shuttle The shuttle service would increase commerce to the Great Mall and on-site retail areas, increase use of BART and other |

| | | |
|--------------------------|--|--|
| | | local public transportation, decrease wear and tear on local streets, decrease parking demand, decrease pollution, and increase project marketability. |
| Bike share program | Participate in VTA bike share program providing bike rental parking | Not yet calculated |
| Childcare facilities | Applicant is considering donations to Family Resource Center, a non-profit that provides educational resources to help low-income children, as well as to The Crossings at Montague Childcare Facility | Not yet calculated |
| Rooftop deck | 1.16 acre rooftop amenity deck located on Lot 3, which will be publically accessible private open space | Not yet calculated |
| Ped. bridge contribution | Contribution to funding of the pedestrian bridge over Penitencia Creek | \$250,000 |
| Fire equipment | Funding for a Fire Department Rapid Response Vehicle | \$500,000 |

Overview: Staff believes the Site Development Permit amendment is warranted for a number of reasons. As demonstrated above, “The District” can be seen as a signature project for the City of Milpitas, mainly due to the amount of private infrastructure improvements both completed and proposed within the City, its recognition of existing market forces in regards to the updated aesthetics of its previous design while continued focus on compatibility with existing development within the TASP area, the public benefits currently designed and partially in construction, the concentrated effort of placing a grocery retailer within the TASP, and the ongoing professional relationship the City has built with the developer in a joint effort to create and implement of the TASP policies.

Furthermore, the amendment is for a deferral of payment only, without a reduction or removal of the required development fees. The developer has informed staff that its construction schedule is predicated on assistance with the City, and if approved, building permits would be obtained as soon as possible, in order to continue construction adjacent to the “Turing” development, located at the southwest corner of the intersection at Great Mall Parkway and McCandless Drive. Deferral of fees would not substantially affect the timelines and associated budgets of Capital Improvement Projects (CIP) within the TASP area, as long as construction continues in a timely manner. Lastly, the City is expecting continued investment within the TASP for 2019, including approximately \$7,300,000 from the Lantana project (720 Montague) and \$9,000,000 from the remainder of the Anton project (730 E. Capital). For the reasons stated, staff is in support of the requested deferral.

California Environmental Quality Act: The Site Development Permit Amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15162 (No Circumstances Necessitating Preparation of a Subsequent EIR), 15183 (Projects consistent with a Community Plan, General Plan, or Zoning) or Section 15273 (Rates, Tolls, Fares and Charges) in that the proposed action and associated amendment will not substantially affect immediate investment into public facilities infrastructure improvements within the TASP area.

Fiscal Impact: The projected TASP fee for development of “The District – Lot 2,” would remain at \$6,963,507. If a fee adjustment were to be approved, the City would receive the same amount of fees. The difference is that the fees would be collected at different times throughout the project, as demonstrated below:

- \$1,740,877 (plus permit automation and building permit fees) collected prior to release of building permit

- \$3,481,754 (plus permit automation fees) collected prior to release of Temporary Certificate of Occupancy (TCO)
- \$1,740,877 (plus permit automation fees) collected prior to release of Final Certificate of Occupancy (CO)

The impact would potentially affect the FY 2019-20 budget, given that the full \$6,963,507 payment would not be realized for future Capital Improvement Projects within the Transit Area Specific Plan. Deferral of the fee would not delay funding for improvements to roads, sewer, water, park facilities, trail funding, or traffic mitigation, in that the applicant's schedule for construction is estimated to provide complete payment within the next 24 months.

Recommendations:

1. Conduct a public hearing, take public comments, and close the public hearing.
2. Adopt a resolution approving a Site Development Permit Amendment of Resolution No. 8511, allowing modification of Transit Area Specific Fee payment schedule.

Attachments:

- a) [Resolution](#)
- b) [Memo from Lyon Living 8/21/2018](#)
- c) [Adopted City Council Resolution No. 8511](#)
- d) [Map of The District](#)

XIII. NEW BUSINESS

16. Receive Information on the 2020 Census from Marcelo Quinones, Santa Clara County Deputy County Counsel (Staff Contact: Jessica Garner, 408-586-3284)

Background: The 2020 Census is a ten year count and is constitutionally required to count everyone living in the United States, including people of all ages, races, and ethnic groups, citizens and non-citizens. U.S. congressional representation is based on the Census, as are significant amounts of funding; nearly \$2,000 per person per year in federal money comes into California based on census-derived data. An accurate Census count helps provide funding for health care, libraries, law enforcement, transportation, affordable housing and other key services. Approximately \$700 billion of national and more than \$76 billion in federal funding to California was allocated at least in part on Census-related data. Census information is also used for planning, policy development and certain types of litigation (civil rights, fair housing).

Local Update of the Census Addresses (LUCA)

The City has recently completed its LUCA update to the Census Bureau. The LUCA allowed the City to review, update and correct the Census Bureau's Master Address File (MAF). The MAF is the Census Bureau's official inventory of living quarters and selected nonresidential units. This update and review is critical to supporting a high census participation rate because households must be included in the Census MAF to receive their invitation to participate in the Census, to get a password to respond online, to get follow up letters, and to get in-person follow ups by Census staff.

Through the LUCA effort, led by the City's Information Services and Planning Departments, approximately 3,132 addresses for housing units were added or corrected that were not included in the 2018 Census Bureau MAF. The City used numerous data sources to augment its LUCA submission, including information secured from the City's Master Address Database, Planning, Building and Code Enforcement, Housing, and Finance Departments. External data sources included those from the Santa Clara County Registrar of Voters, Santa Clara County Assessor's Office and United States Postal Service.

Analysis: Nationally, there has been a longstanding and significant undercount of hard-to-count groups associated with the Census. These groups have included immigrants, ethnic and racial minorities, families with young children, homeless people, limited English speakers, and low-income households. These groups have not participated in the Census for a variety of reasons, including socioeconomic and cultural considerations, lack of awareness and understanding of the Census, and fear of government. Moreover, there are some unique challenges facing the 2020 Census. These include the following:

- The recent federal decision to add a question regarding citizenship to the 2020 Census has generated strong concerns that this will result in lower response rates from the immigrant community. The State of California along with 17 other states has filed a lawsuit challenging the constitutionality of adding a citizenship question to the census;
- For the first time, individuals will be asked to respond to the Census via the internet. This may decrease response rates due to worries about information security and privacy; and
- The U.S. Census Bureau is facing significant budget constraints that will limit its outreach and technical assistance efforts. For the 2010 Census, there were more than 500 Census field offices around the country that provided technical assistance and outreach, while for the 2020 Census there will only be 250 offices.

Fiscal Impact: According to various reports, each individual not counted in the Census represents a loss of up to \$3,000 per year in state and local funding, or \$30,000 per person over the next decade.

Recommendation: Receive information from Santa Clara County Deputy Counsel Marcelo Quinones regarding the upcoming U.S. Census.

Attachment: None

17. Discuss Cities Association of Santa Clara County Recommendation to Create a Santa Clara/Santa Cruz Community Aircraft Noise Roundtable (Staff Contact: Steve McHarris, 408-586-3059)

Background: On October 3, 2017, the City of San Jose established the Ad Hoc Advisory Committee on South Flow Arrivals to address the issue of aircraft noise. The committee was established in response to complaints from residents from several Santa Clara County cities located west and north of the Airport about the noise impacts when weather conditions require Norman Y. Mineta San José International Airport operations to go into “south flow” operations (i.e. landing aircraft arrive from the north and take off heading south.) The City of San José invited surrounding communities including City of Milpitas to be represented on the Ad Hoc Committee on South Flow Arrivals. At the January 16, 2018 Council meeting, Council appointed Councilmember Bob Nuñez as the member and Vice Mayor Marsha Grilli as alternate to serve on the City of San José Ad Hoc Advisory Committee on South Flow Arrivals. The Ad Hoc Committee approved its final report on May 18, 2018, which has been submitted to the Federal Aviation Administration (FAA) for consideration. The FAA has not yet responded to the Ad Hoc Committee report. It is likely that the FAA will need months to properly respond to the report.

As outlined by Vice Mayor Grilli and Councilmember Nuñez in their August 20, 2018 memo on this topic, the Cities Association of Santa Clara County (CASCC) was asked by Congressional Representatives Eshoo, Khanna, and Panetta to form a regional aircraft noise roundtable. During the above referenced Ad Hoc Advisory Committee meetings, some Committee members expressed the desire to create a Roundtable to be the successor body to the Ad Hoc Advisory Committee to continue working on aircraft noise issues.

At the June 14, 2018 CASC Board meeting, the Board passed a motion to support the formation of an intergovernmental partnership between the cities and counties of Santa Clara and Santa Cruz Counties, the San José Airport, the San Francisco Airport, and the FAA to address aircraft noise issues. Specifically, the CASC Board is asking the cities and jurisdictions in Santa Clara and Santa Cruz Counties to consider adopting a resolution of support for the formation of an intergovernmental partnership to create a Roundtable to address aircraft noise issues.

The governing elements of this body are:

- One vote for each jurisdiction that joins;
- Funded by participating jurisdictions based on a per capita formula;
- Simple majority to take action; and
- Non-voting participants include staff from SJC, SFO, and FAA.

Analysis:

The Airport noise complaints and concerns are currently received, tracked, and reported to the public on a monthly and annual basis; however, the FAA is the sole authority on flight paths and procedures. In the testimony at the Ad Hoc Advisory Committee, the FAA stated that the Bay Area Metroplex, with three major international airports in close proximity to each other, is the second most complicated air space in the nation, only after the New York City airspace. The Airport acknowledges that aircraft noise remains a difficult issue to address, as it entails many competing interests, crosses multiple geographic and legal jurisdictions, is experienced and perceived differently by each individual, and has many technical challenges with no easy solutions. The Airport continues to work with the FAA at a local and national level to seek out methods for controlling and mitigating aircraft noise issues.

As identified by Vice Mayor Grilli and Councilmember Nuñez, there are items in the current proposal put forth by CASC that are of concern with the proposed partnership roundtable that the Council should consider when discussing this item. Items are as follow:

I. Consensus Approach / One Vote Per Jurisdiction

The Ad Hoc Advisory Committee on South Flow Arrivals adopted the guiding principle that solutions put forth from the Committee should be based on a consensus of the participating jurisdictions rather than a simple majority. The purpose of this consensus-based model was that recommendations with consensus are more likely to be considered by the FAA rather than controversial proposals of only a simple majority. The Ad Hoc Committee defined consensus as the support of at least two-thirds of the Committee membership. The proposed CASC aircraft noise roundtable intends to use a one vote per jurisdiction simple majority based model to advance motions and recommendations. Staff recommends continuing the consensus model to generate solutions that have a higher potential for consideration by the FAA.

As mentioned above, the proposed CASC Aircraft Noise Roundtable Memorandum of Understanding designates each jurisdiction to have one vote regardless of population size as identified in Article IX of the proposed Bylaws. This means that the larger jurisdictions such as San José with a population of 1,046,079, and City of Milpitas with a population of 78,106 would each have the same number of votes as Monte Sereno with a population of 3,900.

The challenge that a simple majority vote per jurisdiction model could present in an undemocratic situation, where a policy/recommendation is opposed by the overwhelming majority of the population represented, but still passes because enough smaller juris-

dictions by population vote for it. Although this could happen in the super majority model used for the Ad Hoc Committee, it would result in a more democratic representation.

II. Potential to Move Noise:

The proposed CASC Aircraft Noise Roundtable Resolution includes acknowledgment that the FAA will not support solutions that shift the noise problem from one community to another. However, the proposed CASC Bylaws do not explicitly forbid noise shifting nor does the Statement of Purpose and Objectives in the Memorandum of Understanding. This is of interest because a similar aircraft noise roundtable established for San Francisco International Airport (SFO), of which the proposed CASC roundtable is modeled, has a specific Resolution (No. 93-01) and a statement in Article II of its Memorandum of Agreement stating that signatory agencies/bodies agree:

“that the SFO Roundtable members, as a group, will not take any action(s) that would result in the “shifting” of noise from one community to another, related to aircraft operations at San Francisco International Airport.”

This issue was also addressed by the Ad Hoc Advisory Committee when there was a motion put forth to request the FAA to study the creation of an eastern approach procedure for south flow flights into San José Airport. An eastern approach would bring south flow flights up the eastern side of San José where flights would turn somewhere over Milpitas on final approach to the Airport. The motion received seven votes in favor of this recommendation and five against. The motion failed as it did not meet the two-thirds threshold as required by the definition of consensus.

III. Jurisdictions Missing:

The proposed CASC Aircraft Noise Roundtable includes Santa Clara County and associated cities, and Santa Cruz County, but is missing Alameda County and the City of Fremont whose communities should also be invited to participate.

If the staff recommendation is approved, the City of Milpitas would not immediately join the proposed Cities Association of Santa Clara County (CASC) noise roundtable without incorporating recommendations agreed upon by the City Council. If the noise roundtable receives sufficient support by the other jurisdictions outside the City of Milpitas without Milpitas' requested recommendations, the noise roundtable could go forward without the support and participation of the City of Milpitas. Staff will keep the Council informed on whether CASC decides to move forward with the noise roundtable and in what format.

Fiscal Impact: The amount of the annual funding for each Roundtable voting member jurisdiction shall be based on the approved per capita formula and may be increased or decreased on a percentage basis estimated to be \$39,000 per year will be required if City of Milpitas joins.

Recommendations:

- 1) Defer consideration of joining the Santa Clara/Santa Cruz Airport Roundtable being formed by the Cities of Association of Santa Clara County until the FAA has responded to the recommendations of the Airport Ad Hoc Advisory Committee on South Flow Arrivals.
- 2) Adopt the position that future participation in the Santa Clara/Santa Cruz Airport Noise Roundtable be conditioned on the following changes to the governance and structure of the body:
 - a. Proportional representation based on population for member jurisdictions;
 - b. Recommendations from the Roundtable require a 2/3 majority to ensure consensus;

- c. Amending the bylaws of the Roundtable so that no recommendations will be made that would only result in shifting noise to another community; and
 - d. Extension of an offer of Roundtable voting membership to the County of Alameda and the City of Fremont.
- 3) Authorize City Manager to send a letter communicating the above recommendation items to Cities Association of Santa Clara County.

Attachments:

- a) [Cities Association Roundtable Packet 6/19/2018](#)
- b) [Committee Report](#)
- c) [Draft letter from City Manager](#)

XIV. AGREEMENT

- 18. Approve the Conceptual Design for the Milpitas Sports Center Skate Park and Snack Shack/Restroom Building; and, Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Verde Design Inc. to Increase Compensation by \$46,000 for Project No. 5111 (Staff Contacts: Renee Lorentzen, 408-586-3409 and Steve Erickson, 408-586-3301)**

Background: The design and construction of the Sports Center Skate Park and renovation of the snack shack/restroom building, Project No. 5111, is included in the approved 2018-2023 Capital Improvement Program.

The 20,000 square foot skate park includes hardscape concrete skate structures, lighting, irrigation, landscaping, drainage, accessible paths, drinking fountain, picnic tables, fencing, and other amenities. An updated Sports Center Skate Park conceptual plan was presented to the Parks, Recreation and Cultural Resources Commission (PRCRC) on August 6, 2018. However, no recommendation was provided by PRCRC.

The project also includes the renovation of the snack shack/restroom building which is in need of repair and building code upgrades due to the growth of use and number of amenities of the Sports Center Complex. Upon evaluation of the existing snack shack and restroom structure, the architect determined it would need a significant amount of selective demolition and improvement to bring the structure up to code. A recommended better option would be to replace the existing structure with a new more custom modular building structure for the snack shack and restrooms. The new modular building would include a modern snack shack facility with required pantry storage, lighting, mechanical, plumbing, and electrical, as well as the Americans with Disabilities (ADA) code compliance. The adjacent restroom facility would include new stalls, fixtures, and space that are code compliant.

To provide equipment storage for the different sports leagues at the Sports Center Complex, a total of five 8 foot by 20 foot steel storage containers would be constructed on concrete aprons around the three fields for ease of access and use by the sports leagues. The cost to renovate the existing snack shack/restroom building versus the installation of a new modular facility is about the same at \$1.1 million; therefore, the recommendation is to demolish the existing structure and install the new modular.

The facility evaluation also revealed that there is an insufficient number of public restroom facilities at the Sports Center fields based upon the number of fields, spectator capacity, and the amount of usage at the facility. In addition, the California Building Code Section 2902.3.2 requires restroom facilities to be located not more than 500 feet away from the path of travel within the site. The 500 foot code requirement means that an additional

public restroom building is required in addition to what would be provided with the snack shack/restroom building aforementioned.

To be complaint with the Building Code, staff recommends installation of a second modular restroom building with two unisex stalls within Cardoza Park near the baseball backstop adjacent to the Sports Center fields. This location will provide a restroom facility for both Cardoza Park and Sports Center Complex meeting the distance requirement identified in the Building Code. The estimated construction cost for this second modular building is estimated at \$850,000. Additional funding for the purchase and construction of this additional restroom building will be required. The additional funding will be programmed in the project as part of the FY 2019-2024 Capital Improvement Program process starting in November 2018.

The second modular restroom building requires additional design services from Verde Design Inc. Staff has negotiated a scope of work and fee with Verde Design, Inc. not to exceed \$46,000 for these additional services, and funding is available in the current project budget. Approval of Amendment No. 2 to the agreement with Verde Design Inc. is recommended, which would bring the total amount of the agreement to \$656,000.

The skate park concept was presented to the PRCRC on August 6; however, the concept for the restroom and snack shack building was not included as part of this presentation. To allow the project to proceed to the next phase of design and to maintain the project schedule, staff is recommending City Council approval of the conceptual design for both the skate park and snack shack and restroom buildings. The snack shack and restroom buildings concept will be brought back to the PRCRC at the next available meeting as an informational update. Staff is anticipating to complete design documents and advertise for public bid by spring 2019. Once the construction contract is awarded to the lowest responsible and responsive bidder by the City Council, construction will start in summer 2019. Construction is estimated to require approximately one year to complete.

Fiscal Impact: The additional \$46,000 for Amendment No. 2 is available in the project budget. Additional budget appropriation for \$850,000 needed for the construction of the additional modular restroom building will be programmed into the project as part of the FY 2019-2024 Capital Improvement Program process starting this November.

Recommendations:

1. Approve the conceptual designs for the Sports Center Skate Park and snack shack and restroom building at the Milpitas Sports Center Complex; and
2. Approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with Verde Design, Inc. to increase compensation not to exceed \$46,000 for additional design services for the Sports Center Skate Park, Project No. 5111.

Attachment: [Amendment No. 2 to Agreement with Verde Designs](#)

XV. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XVI. ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 18, 2018